

Communications with Prospective Vendors/Partners

January 2000

Government Code section 20153 restricts communication between CalPERS Board members and those who are financially interested in a Board decision, under two circumstances:

- (a) Vendor Contracts: These are contracts for goods or services. They are typically awarded through a competitive bidding process ("Request for Proposal (RFP)" or "Invitation to Bid (IFB)"), but may also be awarded under Board policy justifying an exemption from competitive bidding. Typical duration is 3-5 years.

Certain communications affecting vendor contracts are prohibited. Specifically, during the process leading to the award of such a contract, no CalPERS Board or staff member may:

- knowingly communicate with any party financially interested in the contract (or officer or employee of such a person)
- concerning any matter relating to the contract or the selection process

The "process" begins on the date that a solicitation document is issued and concludes when the Board makes the contract award decision. CalPERS' Legal Office provides a monthly update of those contract award processes that are in process. See Tab D.2.c.i.

Applicants or bidders who knowingly participate in a prohibited communication must be disqualified from the contract or award.

Exceptions: Communications that are:

1. Expressly part of the selection process (e.g., requests from contracts administrator for additional information);
2. Part of a noticed Board meeting (e.g., finalist interviews);
3. Incidental, exclusively social, and do not involve CalPERS or its business, or the Board or staff member's role as a CalPERS official;
4. Within the scope of the Board or staff member's private business or public office wholly unrelated to CalPERS, and do not involve CalPERS or its business.

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(continued)

- (b) Investment Transactions: These are decisions regarding the manner in which CalPERS' assets are invested; the transaction is memorialized through a "contract" (e.g., a partnership agreement or Limited Liability Company formation), but a contract is not "awarded." There is typically no express duration of the legal entity that is being formed by the contract.

Certain communications concerning investment transactions, although not prohibited, must be disclosed. Specifically, communications between a Board member and a party who is financially interested in a prospective investment transaction, that occur during the period in which the transaction is under evaluation and concern any matter relating to the transaction or its evaluating, must be disclosed.

The disclosure must be in writing, and both the Board member and the financially interested party have the disclosure obligation. (Forms for Board member disclosure are enclosed in the front pocket of this binder.) The disclosure should be filed with the Chief Executive Officer, before the Board's action on the prospective transaction.

The evaluation period for a prospective investment transaction begins when it is listed in the monthly activity reports prepared for the Investment Committee, and ends when the transaction is either rejected or approved. The monthly activity reports cover Private Markets, Public Markets and Real Estate, and are contained in the closed session meeting materials.

Exceptions: Communications that are:

1. Incidental, exclusively social, and do not involve CalPERS or its business, or the Board or staff member's role as a CalPERS official;
2. Within the scope of the Board or staff member's private business or public office wholly unrelated to CalPERS, and do not involve CalPERS or its business.

Government Code Section 20153

(a) . . .

(b) During the evaluation of any prospective investment transaction, no party who is financially interested in the transaction, or an officer or employee of that party, may knowingly communicate with any board member concerning any matter relating to the transaction or its evaluation, unless the financially interested party discloses the content of the communication in a writing addressed and submitted to the executive officer and the board prior to the board's action on the prospective transaction. This subdivision shall not apply to communications that are part of a noticed board meeting, or as provided in subdivision (c).

- (1) The writing shall disclose the date and location of the communication, and the substance of the matters discussed. The board shall prescribe other procedures concerning this disclosure.
- (2) Any board member who participates in a communication subject to this subdivision shall also have the obligation to disclose the communication to the executive officer and board, prior to the board's action on the prospective transaction. The board shall prescribe procedures for this disclosure, including procedures to apply to board members who fail to disclose communications as required by the subdivision.
- (3) Consistent with its fiduciary duties, the board shall determine the appropriate remedy for any knowing failure of a financially interested party to comply with this subdivision including, but not limited to, outright rejection of the prospective investment transaction, reduction in fee received, or any other sanction.
- (4) The communications disclosed under this subdivision shall be made public, either at the open meeting of the board in which the transaction is considered, or if in closed session, upon public disclosure of any closed session votes concerning the investment transaction.

(c) The procedures and prohibitions prescribed by this section shall not apply to:

- (1) Communications that are incidental, exclusively social, and do not involve the system or its business, or the board or staff member's role as a system official.
- (2) Communications that do not involve the system or its business and that are within the scope of the board or staff member's private business or public office wholly unrelated to the system.

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Information

- The "evaluation of a prospective investment transaction" begins when a transaction is listed in the staff's monthly "activity" report and ends when the Investment Committee takes action on the transaction.
- The monthly activity reports will list those principals who are directly involved in a transaction, along with any placement agent(s), thus constituting the "financially interested" parties.
- Disclosure is required by Board Members and third parties when a transaction appears on the Investment Committee agenda for action.